IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME-TAX APPLICATION NO. 75 OF 1995

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 21, 2007.

Heard Shri Thakkar, learned counsel for the appellant and Shri Jaiswal, learned counsel for the respondent.

This application filed by the assessee under Section 256(2) of the Income-tax Act, 1961, was admitted on the following questions of law :

"1. Was the Tribunal legally right in dismissing the assessee's appeal without considering and deciding the assessee's application under Rule 29 of the Appellate Tribunal Rules, 1963, for production of the additional evidence ?

2. Under the facts and circumstances of the case, would the mere offer of assessment of Rs.40,000/- by the Assessee – firm, mean that the assessee concealed its income ?"

The Assesment Year involved herein

is Assessment Year 1987-88.

In this case after the assesment order was completed on 30.11.1987, the Assessing Officer received information regarding demand drafts obtained by the firm from the various banks. When questioned, the assessee informed that the said drafts belonged to the relatives of the partners of the assessee firm. Even before the notice under Section 148 of the Act was issued, the assessee offerred the said amount to tax. Accordingly, the said amount was assessed in the year in question and penalty was levied under Section 271(1)(c) of the Income-tax Act, 1961. The appeal filed by the assessee against the said order was dismissed by the CIT(A) as also by the Tribunal. Since reference filed by the assessee under Section 256(1) of the Act was dismissed, the assessee has filed the present application under Section 256(2) of the Income-tax Act, 1961.

The question to be considered herein is where the assesee has consistently contended that the bank drafts were belonging to the relatives of the assessee can it be said that there is concealment of income so as to

levy penalty under Section 271(1)(c) of the Income-tax Act. In our opinion, the question raised herein is a question of law arising from the order of the Tribunal.

Accordingly, the application is allowed on the aforesaid two questions of law. The Tribunal is directed to forward the statement of the case as expeditiously as possible. Rule made absolute accordingly. No costs.

JUDGE **JUDGE**

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